

Serial No. 10/691,967

PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Robert Garrett	Docket No.: GARR-0009 RPB REF: GARR-0009
Serial Number: 10/691,967	Art Unit: 3724
Filing Date: October 24, 2003	Examiner: CAROLYN T. BLAKE
Title: ROOFMATES™ SHINGLES AW™	

PETITION TO WITHDRAW NOTICE OF ABANDONMENT UNDER 37 C.F.R.
1.53, OR, IN THE ALTERNATIVE, TO REVIVE UNDER
37 C.F.R. 1.137(a) or (b)

Sir:

Applicant respectfully requests that the Commissioner vacate and withdraw the Notice of Abandonment under 37 C.F.R. §1.53 dated November 29, 2006, as applicant has fully responded to the outstanding Action in the Above-Captioned Application. In the alternative, applicant respectfully request the Commissioner revive the above-captioned application under 37 C.F.R. §1.137(a) on the grounds of unavoidable delay. In the alternative, applicant also respectfully requests the Commissioner revive the above-captioned application under 37 C.F.R. §1.137(b) on the grounds of unintentional delay.

FACTS

In the switch to a paperless office and on-line filing, the Patent Office has apparently encountered some difficulties in receiving paper responses to Office Actions. These difficulties can be placed into two categories:

1. RESPONSES are received and scanned into the image file wrapper system, but are not docketed to the Examiner. As a result, the case does not appear on the Examiner's docket and is not acted upon, even though papers have been timely received.

2. RESPONSES are only partially scanned in, or scanned improperly, resulting in missing pages in a response.

It appears that both errors occurred in this instance - the RESPONSE filed by the undersigned on March 27, 2006 was only partially scanned in, and was not docketed to the Examiner. As a result, the Examiner did not act on the case and note the missing scanned portions in a timely manner.

The undersigned started noticing a number of cases having this scanning and docketing problem in November of 2006. A review of ALL of the files of the undersigned revealed at least three cases where RESPONSES were scanned but not docketed, and one case (the

present application) where only a portion of the pages were scanned.

The undersigned has contacted fellow practitioners and has received similar reports of documents being improperly scanned and/or docketed.

Thus, it would appear there is a system-wide problem at the Patent Office in this transition to the paperless office, and thus, the error in this instance is on the part of the Patent Office. Given the volume of paper received by the Patent Office (more than 25,000 documents per day) it is understandable that errors may occur when scanning incoming documents.

On-line filing, hopefully, will alleviate this problem. Unfortunately, for many practitioners, this is a difficult proposition, as many files are not properly associated with a practitioner's customer number, and attempts to correlate applications with customer number can prove futile. As a result, many practitioners, including the undersigned, have not yet adopted the online filing system of the USPTO.

The undersigned, as part of a complete docket review of all outstanding files, contacted the Examiner in the present case to inquire of the status of the case. The Examiner, while very helpful and courteous, indicated that a PETITION would need to be

filed in the present case, and hence the need for the present PETITION.

The undersigned notes that in other cases, where the papers were scanned, but not docketed, the Examiner usually rescinded any Notice of Abandonment and acted on the case on the merits. However, in the present case, papers are missing from the file.

Enclosed as Exhibit A are copies from the USPTO PAIR website, showing that papers were received by the Patent Office. These Papers, including the Substitute Specification and Extension of Time request, were scanned into the Image File Wrapper System. However, no record of these papers appears in the docket (PALM) records.

Enclosed as Exhibit B are copies of the United States Postal Service (USPS) Priority Mail receipts for the RESPONSE as mailed to the United States Patent & Trademark Office, and to the Applicant, by the undersigned on March 27, 2006. Applicant has tried to run a TRACK on these Priority Mail receipts, but it appears the USPS only keeps these online for 90 days, and only archives EXPRESS, GLOBAL EXPRESS, and GLOBAL PRIORITY MAIL receipts. However, as the USPTO records clearly indicate that documents were received shortly after the mailing date, it is a moot issue.

Enclosed as Exhibit C is a copy check #1950 for \$510 for the extension of time, from the undersigned's QUICKBOOKS accounting software and a printout from the PTOFCU website showing that this check was cashed. Unfortunately, image date for this check is not available at this time. Applicant can order this data from the PTOFCU for an additional fee, if it is deemed necessary for this Petition.

Enclosed as Exhibit D is a copy of the COMPLETE RESPONSE as filed on March 27, 2006, including an amendment to the Specification, Claims, and Abstract, as well as a cover sheet and Petition for Extension of Time.

It is clear from the record that these Papers were received by the Patent Office. However, only a portion of the papers were scanned in. This may be due to papers being separated or jammed in the scanner, due to the use of staples or the like.

The undersigned carefully counts every page of every paper submitted to the Patent Office. Moreover, original papers are submitted to the Patent Office, and then copies of these papers made for applicant's file and the undersigned's file. Thus, even if a copier jam were to occur, it is applicant's copies which would be short papers, not the USPTO originals.

In summary:

A. Applicant filed a COMPLETE RESPONSE on or before the due date in the above-captioned application.

B. The Patent Office received this RESPONSE, but apparently did not scan in all the documents for the RESPONSE.

C. The Patent Office failed to docket this RESPONSE.

D. This problem with scanning and docketing is not unique or unusual to the present application.

Thus, applicant requests that the NOTICE OF ABANDONMENT be RESCINDED and the RESPONSE to the OFFICE ACTION be acted upon without further delay.

In the alternative, applicant petitions to revive the application on the grounds of UNAVOIDABLE DELAY (delay on the part of the Patent Office).

In the alternative, applicant petitions to revive the application on grounds of UNINTENTIONAL DELAY.

ADEQUATE SHOWING OF THE CAUSE OF UNAVOIDABLE DELAY

In this instance, it appears that the unavoidable delay was due entirely to the fault of the Patent and Trademark Office. Applicant has no control over the operations of the Patent and Trademark Office, and therefore the delay was entirely unavoidable on the part of applicant.

As noted above, at least part of applicant's papers were received by the Patent Office. The Patent Office should have docketed these papers as a RESPONSE to the Outstanding Office Action and forwarded the case to the Examiner for Action.

If papers were missing from the RESPONSE, the Examiner should have notified applicant and provided a 30-day NOTICE OF INCOMPLETE RESPONSE to correct the problem.

However, since the Patent Office failed to docket the case, there was no opportunity for applicant to be made aware of the failure of the office to properly scan all documents.

It was only when applicant noted a number of cases where papers had not been properly docketed, and executed a painfully labor-intensive manual review of all outstanding Patent files in his care, did the error on the part of the Office become apparent.

RESPONSE TO NOTICE OF ABANDONMENT

As noted above, attached herewith is a copy of the original RESPONSE apparently misplaced by the Patent Office. Applicant respectfully requests that the enclosed RESPONSE be entered into the file and acted upon by the Patent Office. Applicant submits that the enclosed RESPONSE fully responds to the outstanding Action in the Application.

PETITION FEE UNDER 37 C.F.R. 1.17(1)

The Commissioner is authorized to charge the petition fee of \$130.00 and any other fees required, to Deposit Account No. 50-1393 of ROBERT PLATT BELL, attorney of record in the present application.

However, applicant hereby petitions that the Patent Office refund this fee to applicant, as the error which required this petition was entirely due to the fault of the Patent Office. As such, applicant is entitled to a full refund of the petition fee.

NO TERMINAL DISCLAIMER REQUIRED

Under 37 C.F.R. 1.137(c), no terminal disclaimer is necessary in the present petition, as the above-captioned application was filed after June 8, 1995 (specifically, on 10/24/2003).

However, applicant respectfully notes that the term of applicant's patent has been correspondingly truncated by the delay introduced by the Patent Office due to the loss of applicant's RESPONSE papers. Moreover, further delay in prosecution could seriously affect applicant's patent rights due to the rapid advances in technology.

Thus, applicant respectfully requests that the above petition be acted on without delay and that the present application be immediately advanced for examination and further prosecution.

REQUEST FOR ALTERNATIVE RELIEF

As stated above, a Notice of Abandonment under 37 C.F.R. 1.53 in the above-captioned application was sent in error, probably due to applicant's RESPONSE being inadvertently misplaced by the Patent Office. Applicant respectfully requests vacating and withdrawing that Notice of Abandonment as outlined above.

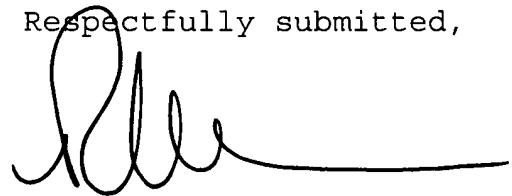
In the alternative, applicant respectfully requests this petition be treated as a petition to revive under 37 C.F.R. 1.137(b) on the grounds of unintentional delay. Moreover, applicant respectfully requests that any and all fees necessary to revive the above-captioned application be charged to the Deposit Account No. 50-1393 of ROBERT PLATT BELL, attorney of record in the above-captioned application.

Applicant hereby certifies that the entire delay in filing the required reply from the due date until the filing of a grantable petition under 37 C.F.R. §1.137(b) was unintentional.

If there are any additional papers or items necessary to complete this petition, the Office is encouraged to call the undersigned at 703-474-0757 to expedite the above-captioned application.

I, Robert Bell, hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine, or imprisonment, or both, under *Section 1001 of Title 18 of the United States Code*, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Bell', followed by a long horizontal line extending to the right.

Robert P. Bell
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December 7, 2006